

Message Text

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ACTION EB-08

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TO SECSTATE WASHDC 6454

INFO USMISSION USUN NEW YORK

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E.O.11652: NA

TAGS: ETRD, TECH, UNCTAD

SUBJECT: MEETING OF UNCTAD GROUP OF EXPERTS ON A CODE OF
CONDUCT FOR TRANSFER OF TECHNOLOGY

1. SUMMARY: THE SECOND SESSION OF THE GROUP OF EXPERTS ON
A CODE OF CONDUCT FOR TRANSFER OF TECHNOLOGY MET FROM
MARCH 28 TO APRIL 5. THE ENTIRE TIME WAS DEVOTED TO DRAFTING
WITHIN THREE WORKING GROUPS. PROGRESS IN WORKING GROUP I
WAS EXTREMELY SLOW. THE G-77 WAS NOT PREPARED TO COMPROMISE
ON VARIOUS ELEMENTS IN THE PREAMBLE, OBJECTIVES AND
PRINCIPLES, AND SPECIAL TREATMENT FOR LDC'S. AT THE SAME
TIME GROUP B WAS NOT READY TO BUDGE ON SEVERAL KEY ISSUES.
THE ACHIEVEMENTS IN WORKING GROUP II ON RESTRICTIVE BUSINESS
PRACTICES (RBP'S) WERE MORE POSITIVE. TENTATIVE AGREE-
MENT IN THE FORM OF A COMPOSITE TEXT WAS MADE AS TO TEN
PRACTICES. WORKING GROUP III DISCUSSED IN GENERAL TERMS
THE NATIONAL REGULATION CHAPTER. END SUMMARY.

2. WORKING GROUP I MET THROUGHOUT THE SEVEN WORKING
DAYS AND DEALT WITH THE FOLLOWING ISSUES:
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A. PREAMBLE. ALTHOUGH SEVERAL DIFFICULT ISSUES PRECLUDED
THE DRAFTING OF A COMPLETE TEXT, THERE WAS AGREEMENT
ON SEVERAL PARAGRAPHS. THESE INCLUDED REFERENCE TO
THE RULE OF SCIENCE AND TECHNOLOGY IN DEVELOPMENT WITH
PARTICULAR REFERENCE TO LDC'S, REFERENCE TO RELEVANT
DECISIONS OF UN BODIES, PROMOTION OF COOPERATION IN

THIS FIELD AND OTHER PROVISIONS OF THIS GENERAL NATURE. THE MOST DIFFICULT ISSUES WHICH APPEAR IN BRACKETED FORM INCLUDE THE G-77 INSISTENCE OF RIGHT OF ACCESS TO TECHNOLOGY BASED ON THEIR BELIEF THAT TECHNOLOGY IS A UNIVERSAL HUMAN HERITAGE, THEIR INSISTENCE ON THE UNRESTRICTED FLOW OF TECHNOLOGICAL INFORMATION, AND REFERENCE IN SEVERAL PLACES TO THE LEGALLY BINDING CHARACTER OF THE CODE.

B. OBJECTIVES AND PRINCIPLES. THIS ALSO PROVED TO BE A DIFFICULT SECTION. A CONSOLIDATED TEXT WAS COMPLETED ON THE OBJECTIVE OF FACILITATING ACCESS TO AND THE INTERNATIONAL FLOW OF TECHNOLOGY. THERE IS ALSO A PARAGRAPH WITH BRACKETS RELATED TO THE ESTABLISHMENT OF A BASIS FOR NEGOTIATIONS BETWEEN PARTIES TO TECHNOLOGY TRANSFER TRANSACTIONS. LASTLY, THERE IS AGREED LANGUAGE WITH REGARD TO STRENGTHENING THE TECHNOLOGICAL CAPABILITIES OF ALL COUNTRIES, ESPECIALLY LDC'S. BEYOND THIS IT WAS NOT POSSIBLE TO MAKE FURTHER PROGRESS IN THE FORM OF ANY AGREED LANGUAGE. A MAJOR OBSTACLE WAS THE REFUSAL OF THE G-77 TO SUBSCRIBE TO OUR INSISTENCE THAT MUTUAL BENEFITS ACCRUE TO TECHNOLOGY, SUPPLIERS AND RECIPIENTS ALIKE. OUR NEW FORMULATIONS FOR THIS CHAPTER INCLUDE WORDING WHICH WOULD ALLOW THE PARTIES TO CONCLUDE AGREEMENTS UNDER MUTUALLY SATISFACTORY TERMS AND CONDITIONS. THE G-77 WOULD NOT ACCEPT THIS NOTION, BUT INSISTED THAT THE TERMS AND CONDITIONS BE GOVERNED BY THE CODE. THIS FUNDAMENTAL DIFFERENCE WAS ALSO RE-

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FLECTED IN SOME OF THE OTHER PARTS OF THIS CHAPTER.

C. SPECIAL MEASURES FOR LDC'S. THE GROUP CONDUCTED A FIRST READING OF THIS SECTION BASED ON NEW DRAFTS SUBMITTED BY THE G-77 AND GROUP B. REGRETABLELY, THE G-77 HARDENED ITS POSITION ON THIS SECTION. WHILE THERE MAY BE ROOM FOR AGREEMENT ON SOME SECTIONS, THE GAPS IN THE RESPECTIVE PAPERS DID NOT PERMIT ANY DRAFTING ON THIS SECTION. ONE BASIC PROBLEM IS THE G-77 CALL FOR DEVELOPED COUNTRIES TO INSURE THE DELIVERY OF PREFERENTIAL TREATMENT IN THE AREAS, INTER ALIA, OF TAXATION, CREDIT FACILITIES, ETC. THERE IS ALSO A DEMAND THAT OUR GOVERNMENTS REQUIRE ENTERPRISES TO EXTEND PREFERENTIAL TREATMENT.

D. DEFINITIONS AND SCOPE OF APPLICATION. THERE WAS NO DISCUSSION ON THIS SECTION.

3. WORKING GROUP II.

A. THE USDEL WAS DESIGNATED AS SPOKESMAN FOR THE GROUP B COUNTRIES, AND DURING SEVERAL MEETINGS OF THE WORKING GROUP POINTED OUT THAT THE PROVISIONS OF THE CHAPTER OF THE CODE DEALING WITH RBP'S WOULD HAVE TO GIVE DUE REGARD TO BOTH THE PROTECTION OF THE AIMS OF INDUSTRIAL PROPERTY REGHTS GRANTED UNDER RELEVANT LEGISLATION AS WELL AS THE AIMS OF RBP LEGISLATION. HE FURTHER NOTED THAT MANY PRACTICES CAN BE REASONABLE IN VARIOUS CIRCUMSTANCES AND PREFERRED THEIR FORMULATION IN A GENERAL FORM RATHER THAN IN MINUTE DETAIL.

B. IN VIEW OF THE READINESS OF THE GROUP OF 77 TO ENTER INTO IMMEDIATE DISCUSSIONS REGARDING THE IN-

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DIVIDUAL PRACTICES, WORKING GROUP II DECIDED TO CONTINUE ITS DELIBERATIONS AS A CONTACT GROUP, WHICH ACTUALLY UNDERTOOK DRAFTING ON AN INFORMAL BASIS. DISCUSSIONS WERE BASED ON THE EXISTING PROPOSALS BY THEIR VARIOUS GROUPS (INCLUDING VERSIONS OF RBP'S WHICH HAD BEEN AGREED UPON AT A GROUP B MEETING IN PARIS IN EARLY MARCH, AND SOMEWHAT MODIFIED DURING MEETINGS OF GROUP B AT THIS SESSION), AS WELL AS AMENDMENTS PROPOSED DURING THE DELIBERATIONS OF THE CONATCT GROUP.

C. AFTER EXTENDED EXHCANGES OF VIEWS BY THE VARIOUS COUNTRY GROUPS, THE CONTACT GROUP ELABORATED COMPOSITE TEXTS ON THE FOLLOWING TEN RBP'S:

- (1) RESTRICTIONS AFTER EXPIRATION OF ARRANGEMENTS;
 - (2) RESTRICTIONS OR OBLIGATIONS AFTER EXPIRATION OF INDUSTRIAL PROPERTY RIGHTS;
 - (3) GRANT-BACK PROVISIONS;
 - (4) CHALLENGES TO VALIDITY;
 - (5) SALES ARRANGEMENTS RELATED TO COMPETING TECHNOLOGIES OR PRODUCTS;
 - (6) RESTRICTIONS ON RESEARCH;
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- (7) RESTRICTIONS ON THE USE OF PERSONNEL;
- (8) PRICE FIXING;
- (9) RESTRICTIONS ON ADAPTION;
- (10) EXCLUSIVE SALES OR REPRESENTATION AGREEMENTS.

D. IT SHOULD BE NOTED THAT AGREEMENT ON MANY OF THE ABOVE-NOTED RBP'S IS STILL FAR AWAY SINCE THE BRACKETED LANGUAGE PROPOSED REVEALS SIGNIFICANT DIFFERENCES OF OPINION.

E. WITH RESPECT TO THE APPLICABILITY OF THE RBP'S TO ONLY INDEPENDENT ENTERPRISES, GROUP B POINTED TO SEVERAL RBP'S WHICH COULD NOT BE REASONABLY APPLIED TO WHOLLY OWNED SUBSIDIARIES, FOR INSTANCE. SINCE, HOWEVER, THIS SUBJECT IS NOT YET FULLY RESOLVED WITHIN GROUPB, IT WAS DECIDED THAT THE APPLICABILITY QUESTION NOT BE RAISED FORMALLY DURING THIS MEETING.

4. WORKING GROUP III MET TWICE AND CONSIDERED THE NATIONAL REGULATION CHAPTER. A FIRST READING REVEALED ONCE AGAIN THAT WE HAVE A LONG WAY TO GO BEFORE AN AGREEMENT IS HAVVERED OUT. THE UNDERLYING PROBLEM IS THE DIFFERENCE IN APPROACH. THE G-77 INSISTS THAT THE SECTION SPECIFY THE TYPES OF LAWS AND REGULATIONS WHICH GOVERNMENTS SHOULD ADOPT TO REGULATE TRANSFER OF TECHNOLOGY. ALL OF THEIR PROPOSALS ARE WEIGHTED TOWARDS LAWS WHICH FAVOR RECIPIENT COUNTRIES. THE MAIN PROBLEM IS THAT THE G-77 WOULD ELABORATE WHAT LAWS SHOULD BE ADOPTED AS OPPOSED TO OUR VERSION WHICH TALKS OF HOW LEGISLATION MIGHT BE ENACTED. OWING TO THIS DIFFERENCE, DRAFTING ON THESE PORTIONS OF THE SECTION WAS NOT POSSIBLE. ONE COMPOSITE PARAGRAPH WAS AGREED TO, WITH BRACKETS, IN WHICH RECOGNITION OF THE RIGHTS OF STATES TO ADOPT LAWS AND REGULATIONS IS RECOGNIZED.

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5. AT THE NEXT SESSION OF THE GROUP OF EXPERTS (JULY 25-29) WORK WILL CONTINUE ON THESE SUBJECTS. IT WAS AGREED THAT WORKING GROUP I SHOULD FOCUS ITS ATTENTION ON DEFINITIONS AND OBJECTIVES AND PRINCIPLES. WORKING GROUP II IS TO CONTINUE ON RBP'S AND III WILL DRAFT ON NATIONAL REGULATION. IN LIGHT OF THE DISCUSSIONS AND THE MANY PAPERS GENERATED AT THIS MEETING, ALL GROUPS WILL UNDERTAKE TO HAVE INTER-SESSIONAL MEETINGS. GROUP B AGREED TO MEET IN THE OECD FROM JUNE 14 THROUGH 16. FOR THAT PURPOSE SWEDEN WILL PREPARE A NEW PAPER ON NATIONAL REGULATION, AND THE FRG WILL WORK ON SPECIAL MEASURES FOR LDC'S. IT IS NOT PLANNED TO DISCUSS RBP'S AT THE OECD MEETING. THE MAIN OBJECTIVE WILL BE TO IDENTIFY THOSE AREAS FOR WHICH GROUP B MUST MAINTAIN A FIRM STANCE WHILE AT THE SAME TIME STRIVING TO BE FORTHCOMING ON AS MANY ISSUES AS POSSIBLE.

6. FOR US MISSION OECD PARIS: REQUEST THAT THE MISSION INFORM THE OECD SECRETARIAT OF THE CONTENTS OF THIS REPORT. IN PARTICULAR, PLEASE ASK THE SECRETARIAT TO SCHEDULE A MEETING OF THE ADHOC POLICY GROUP ON MNE'S OF THE COMMITTEE OF THE CSTEP FROM JUNE 14 THROUGH 16, AND CONFIRM BY CABLE TO WASHINGTON THAT THIS IS ACCEPTABLE. YOU COULD ALSO MENTION THAT AN EARLY CIRCULATION OF A BRIEF AGENDA AND CONFIRMATION OF THE DATES TO ALL MEMBERS WOULD BE HELPFUL. SORENSON

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